

**IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION AT KNOXVILLE**

EDNA C. WELCH,)	
)	HAMILTON CIRCUIT
Plaintiff/Appellee,)	
)	
v.)	
)	NO. 03A01-9610-CV-00316
FRANK DEVINEY and AGNES)	
DEVINEY,)	
)	
Defendants/Appellants)	AFFIRMED

Jeffrey D. Boehm, Chattanooga, for Appellants
Brian M. House, Chattanooga, for Appellee

OPINION

____INMAN, Senior Judge

I

This case was filed in the General Sessions Court to recover possession of a house owned by the plaintiff and occupied by the defendants. A default judgment was entered in the General Sessions Court and the defendants timely perfected an appeal to the Circuit Court, which ordered the defendants to vacate the property.

The defendants appeal and present for review the issues of (1) whether the defendants had an equitable interest in the house, and (2) if not, whether they were entitled to recoup payments allegedly in excess of “the amount specified in their previous rental agreement.”

II

The defendants rented the house in 1979 from the plaintiff and her now-deceased husband for \$400.00 monthly.

On March 11, 1985 a lease was executed by the parties whereby the property

was leased to the defendants for 12 months at \$458.00 per month. They held over until December 8, 1988 when the option agreement was executed.

On December 8, 1988, the parties executed a contract whereby the defendants acquired an option to purchase the house for \$65,000.00, exercisable on or before *December 3, 1989* by making a down payment of \$20,000.00 and delivering a promissory note for \$45,000.00 payable in monthly installments of \$419.50, with interest at 9.5 percent for 240 months, together with insurance and taxes. Pending exercise of the option the defendants agreed to pay, as interest on the purchase price, the sum of \$575.00 per month.

The defendants say that they tendered the down payment to the plaintiff on November 1, 1989 which she refused, offering instead to waive the down payment and accept \$575.00 per month for 30 years, and that they agreed to the substituted terms.

The plaintiff denied the tender and denied that she proposed the substituted terms.

Whatever transpired between the parties, the option was not exercised but the defendants continued to reside in the house for the ensuing 66 months, paying with regularity \$575.00 monthly. Maintenance was provided by the defendants, but the plaintiff paid insurance premiums and taxes.

On August 9, 1995, the plaintiff notified the defendants to vacate the premises within 30 days. They did not do so; on October 30, 1995 she notified the defendants that "she had a lease for them to sign for \$725.00 per month" beginning November 1, 1995. The defendants refused to execute the lease and this detainer action was thereupon initiated. They insisted that they had an equitable interest in the property - and thus were entitled to its possession - but if mistaken as to this premise, that they should recover "for the \$125.00 per month they have paid since December 1988 in excess of the amount specified in their previous rental agreement."

III

Until the option was granted, the defendants paid \$450.00 monthly as rent.

Upon the effective date of the option, the defendants began to pay \$575.00 per month, designated as interest on the purchase price of \$65,000.00 if the option were exercised. Since the option was never exercised, the defendants continued their occupancy of the house and paid \$575.00 for 66 months. As stated, they wish to recover the difference between these payments, in the event their claim of an equitable interest in the property is not upheld.

IV

Our review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(3)(2). *Stone v. City of McMinnville*, 896 S.W.2d 584 (Tenn. 1991). No presumption, of course, attaches to a question of law. *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26 (Tenn. 1996).

We are uncertain of the thrust of the defendants' argument that they are entitled to possession of the property because of their outstanding equitable interest. Since they did not exercise the option available to them, and continued their month-to-month tenancy for 66 months, we see no evidence of their gaining an equitable interest in the property.

With respect to the defendants' claim to reimbursement of the described difference, suffice to state that we do not agree that the rental 'reverted' to the terms of the 1985 lease agreement when the Option agreement became defunct. In the first place, the 1985 lease expired by its own terms on March 1, 1986; moreover, the defendants voluntarily paid \$575.00 monthly for 66 months; moreover, the defendants offered no evidence of a lack of meeting of the minds as to the \$575.00 monthly payments for 66 months, nor did they offer evidence as to the reasonable rental value of the property. When the landlord gives a reasonable notice of the rent increase the tenant becomes liable for the fair market value for the period [it] occupies the premises beyond the terms of the lease. *AHCJ v. Lamar Adv. Co.*, 898 S.W.2d 191 (Tenn. 1995).

The judgment is affirmed at the costs of the appellants.

William H. Inman, Senior Judge

CONCUR:

Houston M. Goddard, Presiding Judge

Herschel P. Franks, Judge

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J U D G M E N T

_____This appeal came on to be heard upon the record from the Circuit Court of Hamilton County and briefs filed on behalf of the respective parties. Upon consideration thereof, this court is of the opinion that there is no reversible error in the trial court’s judgment.

It is therefore, ORDERED and ADJUDGED by this Court that the judgment of the trial court is affirmed. Costs are assessed to the appellant and its surety. The case is remanded to the Circuit Court of Hamilton County for collection of costs pursuant to applicable law.

PER CURIAM